

June 30, 2022

Honorable Nancy Skinner, Chair
Joint Legislative Budget Committee
Senate Budget and Fiscal Review
Committee

Honorable Phil Ting, Chair
Assembly Budget Committee

Honorable Anthony Portantino, Chair
Senate Appropriations Committee

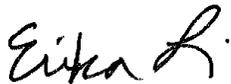
Honorable Chris R. Holden, Chair
Assembly Appropriations Committee

Department of Finance's Response to Proposition 98 Certification Comments

Pursuant to section 9795 of the Government Code, the attached comments and the Director of Finance's responses to the Proposition 98 Certification comments are respectfully submitted.

If you have any questions or need additional information regarding this matter, please call Chris Ferguson, Program Budget Manager, at (916) 445-0328.

KEELY MARTIN BOSLER
Director
By:



ERIKA LI
Chief Deputy Director

Attachment

cc: On following page

cc: Honorable Kevin McCarty, Chair, Assembly Budget Subcommittee No. 2
Honorable John Laird, Chair, Senate Budget and Fiscal Review Subcommittee No. 1
Honorable Jim Nielsen, Vice Chair, Senate Budget and Fiscal Review Committee
Honorable Vince Fong, Vice Chair, Assembly Budget Committee
Gabriel Petek, Legislative Analyst (3)
Elisa Wynne, Staff Director, Senate Budget and Fiscal Review Committee
Kirk Feely, Fiscal Director, Senate Republican Fiscal Office
Christopher W. Woods, Senate President pro Tempore's Office (2)
Christian Griffith, Chief Consultant, Assembly Budget Committee
Joseph Shinstock, Fiscal Director, Assembly Republican Caucus, Office of Policy and Budget
Paul Dress, Caucus Co-Chief of Staff, Assembly Republican Leader's Office
Katja Townsend, Capitol Director, Assembly Republican Leader's Office
Jason Sisney, Assembly Speaker's Office (2)
Mark McKenzie, Staff Director, Senate Appropriations Committee
Jay Dickenson, Chief Consultant, Assembly Appropriations Committee
Honorable Betty Yee, California State Controller
Shawn Silva, Chief Counsel, California State Controller
Dr. Shirley N. Weber, California Secretary of State



June 30, 2022

Teri Holoman
Associate Executive Director Governmental Relations
California Teachers Association
1118 10th Street Sacramento, CA 95814

Department of Finance's Response to Proposition 98 Certification Comments Submitted by the California Teachers Association on June 6, 2022

Dear Teri Holoman:

Pursuant to section 41206.01 of the Education Code, the comments received from the California Teachers Association are respectfully rejected for the following reasons:

1. The 2020-2021 Certification Must Rebench the Minimum Guarantee to Account for \$100 Million Appropriated to the After School Education and Safety (ASES) Program.

Proposition 49 and its implementing statutes, specifically Education Code section 8483.6, prohibit increasing the continuous appropriation for the ASES program (which by law cannot exceed \$550 million) without providing a corresponding increase in the Proposition 98 minimum guarantee. However, the additional funding referenced in the Association's objection was appropriated through multiple annual Budget Acts, as single year augmentations, and not by the continuous appropriation. Education Code section 8483.6 does not apply to single year augmentations and is therefore not subject to a corresponding increase in the Proposition 98 minimum guarantee.

2. The 2020-2021 Certification Must Include Local Property Revenue Estimates with Accurate ERAF Revenue that Includes Charter School ADA in the Calculation of Districts' Entitlement to ERAF Funds.

The Proposition 98 certification requires the use of "the best available estimate until actual data becomes available, and then . . . actual data when it is available" pursuant to Education Code section 41206.01 (a). Finance calculated offsetting property tax revenues using the most updated actual data available from the California Department of Education (CDE), in addition to estimates of expected property tax collection from the State Controller's Office and the CDE. As a result, consistent with Education Code section 41206.01 and the Sacramento County Superior Court's ruling in *California School Boards Association and its Education Legal Alliance v. Yee*, Case No. 34-2021-80003680, upholding the State Controller's guidance on Charter

School ADA, offsetting property taxes for the 2020-21 Proposition 98 certification reflect actual property tax revenues reported by the CDE as well as estimated property tax revenues reported by the CDE and the State Controller's Office for the 2020-21 fiscal year.

KEELY MARTIN BOSLER

Director

By:

A handwritten signature in black ink, appearing to read "Erika Li". The signature is written in a cursive, flowing style.

ERIKA LI

Chief Deputy Director

Attachment

cc: Gabriel Petek, State Legislative Analyst

June 6, 2022

Keely Martin Bosler, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814
P98Certification@dof.ca.gov

Senator Nancy Skinner, Chair
Assembly Member Philip Y. Ting, Vice Chair
Joint Legislative Budget Committee
1020 N Street, Room 553
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Re: Objection to Proposed 2020-21 Proposition 98 Guarantee

To Director Bosler, Senator Skinner, and Assembly Member Ting,

The California Teachers Association respectfully submits the following comments on the 2020-2021 draft Proposition 98 certification published by the Department of Finance on May 13, 2022.

CTA objects to the proposed certification on two bases: (1) it does not rebench the Proposition 98 minimum guarantee to account for certain appropriations for the After School Education and Safety (ASES) program and therefore violates Proposition 49 (2002); and (2) it undercounts local property tax dollars from local Education Revenue Augmentation Funds (ERAF) that should have been allocated to school districts, charter schools and county offices of education, but which were instead unlawfully diverted to cities, counties, and special districts. The combined effect of these two deficiencies is several hundred million dollars in 2020-21 alone, with permanent damages to education funding reaching billions of dollars.

1. The 2020-2021 Certification Must Rebench the Minimum Guarantee to Account for Appropriations to the ASES Program.

The ASES program was established in 2002 by Proposition 49, a voter initiative. See Cal. Educ. Code §§ 8482-8484.65. To support the ASES program, Proposition 49 provides a continuous appropriation “not to exceed five hundred fifty million dollars (\$550,000,000) [. . .]” *Id.*, § 8483.5(b). Although the Legislature is not prohibited from appropriating more than \$550 million,¹ the voters required that any increase in the continuous appropriation come from non-Proposition 98 funding to prevent the ASES program from encroaching on other preexisting educational programs. To that end, section 8483.6 states that “that portion of any continuous appropriation [. . .] which is in excess of the amount appropriated for [the ASES program] for the immediately preceding fiscal year shall not be appropriated until the Legislature has appropriated sums sufficient to fully fund the requirements of [Proposition 98] and shall be appropriated *in addition to* the sums required by and *shall not be considered toward fulfilling the funding requirements of*” Proposition 98. *Id.*, § 8483.6 (emphasis added).² This language was added to ensure that increases in Proposition 49 spending would not encroach on other Proposition 98 educational programs.

¹ *Id.*

² Importantly, this provision can only be changed by another vote of the people; the Legislature cannot amend it. See Ballot Pamp., Gen. Elec. (Nov. 2002), Prop. 49, § 14, p.75.

In 2017, the Legislature made a one-time appropriation of \$50 million in Proposition 98 funding over and above the amount required by Proposition 49. In all subsequent budgets, the ASES program has received similar so-called “one-time” appropriations. In the 2018 Budget Act, the same language appeared with another “one-time” appropriation of \$50 million. Stats. 2018, ch. 29 (SB 840).³ In the 2019 Budget Act, the “one-time” appropriation was increased to \$100 million.⁴ The 2020 Budget Act includes the same \$100 million “one-time” appropriation.⁵ Finally, although not at issue with this proposed certification, the 2021 Budget Act included a \$126.2 million appropriation for ASES, thus continuing the “one-time” appropriation of funds for the ASES program. Stats. 2021, ch. 21 (AB 128).⁶

Clearly this is an attempt to do an end-run around the Proposition 49 requirement that continuous increases in the appropriation for ASES result in a corresponding increase in the Proposition 98 guarantee.

The total funding for ASES in the 2020-21 fiscal year is now \$650 million, not the \$550 million originally appropriated, but the Proposition 98 guarantee has not been rebench by \$100 million. This is precisely the result Proposition 49 was intended to prevent.

The proposed Proposition 98 Certification for 2020-21 should increase the guarantee by \$100 million to account for the \$100 million increase to ASES funding in 2020-21.

2. The 2020-2021 Certification Must Include Local Property Revenue Estimates with Accurate ERAF Revenue that Includes Charter School ADA in the Calculation of Districts’ Entitlement to ERAF Funds.

The proposed certification for 2020-21 also undercalculates the Proposition 98 minimum guarantee due to five counties’ under-allocation of ERAF property tax revenues to school districts.

In 2020, the Legislative Analyst concluded that those five counties had been incorrectly excluding charter schools in their ERAF calculations.⁷ By under-allocating funds to schools, the counties increased their excess ERAF to benefit the county, cities, and special districts. In response, the Legislature amended the ERAF statute to require the State Controller’s Office to issue guidance to the counties for calculating excess ERAF.⁸ The enacted 2020-21 Budget Act also assumed that the Proposition 98 calculation would include the additional ERAF in the calculation of the Proposition 98

³ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB840.

⁴ Stats. 2019, ch. 23 (AB 74),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB74_

⁵ Stats. 2020, ch. 7 (AB 89),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB89.

⁶ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB128.

⁷ Legislative Analyst’s Off., *Excess ERAF: A Review of the Calculations Affecting School Funding* (Mar. 6, 2020).

⁸ Stats. 2020, ch. 24, sec. 84 (SB 98).

guarantee for that year, and future years, as property tax revenues allocated to school districts and community college districts.

Despite the clear legislative intent and objections from CTA, the Education Coalition, and the Department of Finance, the Controller issued a guidance in February 2021 that sanctioned the counties' practice of excluding charter school ADA from the ERAF capacity calculation. In effect, the Controller's guidance wrongly treats charter schools as though they are not part of the school funding revenue system. This is clearly not the case -- state law specifically allocates local revenue to charter schools through their school districts to meet the charter schools' LCFF entitlement. Cal. Educ. Code §§ 42238.02(k), 47635(a), 47662.

The result of the Controller's guidance is a dollar-for-dollar decrease in the Proposition 98 guarantee in 2020-21, when Test 1 is applicable. Last year, the 2020-21 May Revision estimated that property tax revenue for schools in 2020-21 decreased by \$298 million due to the Controller's guidance⁹ – a decrease that has surely grown by the millions.

Moreover, because Test 1 will continue to be operative for the foreseeable future, the Controller's erroneous guidance will lower the guarantee by an additional hundreds of millions of dollars in subsequent fiscal years. By minimizing local proceeds of taxes, the exclusion of charter schools from ERAF calculations will have the effect of permanently lowering the required school funding level statewide by hundreds of millions, and eventually billions of dollars.

The proposed Proposition 98 certification for 2020-21 should increase the guarantee to reflect accurate ERAF revenue amounts that include charter schools in the calculation of school districts' entitlement to ERAF Funds.

Sincerely,



Teri Holoman
Associate Executive Director Governmental Relations
California Teachers Association

Cc: State Controller Betty T. Yee (bettytyee@sco.ca.gov)
Richard J. Chivaro, Chief Counsel, Office of the State Controller (rchivaro@sco.ca.gov)
Kari Krogseng, Chief Counsel, Department of Finance (kari.krogseng@dof.ca.gov)
Gabriel Petek, State Legislative Analyst (gabe.petek@lao.ca.gov)

⁹ 2021-22 May Revision to the Governor's Budget, 47 (May 14, 2021), <http://www.ebudget.ca.gov/2021-22/pdf/Revised/BudgetSummary/K-12Education.pdf>.